

2003

Dr. Lakhi Sakhrani. M.D., An individual v. Alpha Funding Group Trust, a business entity : Brief of Appellant

Utah Court of Appeals

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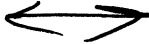
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IN THE UTAH COURT OF APPEALS STATE OF UTAH

DR. LAKHI SAKHRANI, M.D.,)	
An individual,)	Appeal No. 2003 0101-CA
)	
Plaintiff/Appellee,)	Third District Court
)	Case No. 026907222 FJ
vs.)	
)	
ALPHA FUNDING GROUP TRUST,)	
a business entity,)	
)	(Honorable Anthony B. Quinn
Defendant/Appellant.)	Presiding District Court Judge)
)	

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STATEMENT OF JURISDICTION

The Court has jurisdiction pursuant to Utah Code Ann. Section 78-2-2(3)(j) and such other statutes that are proper of the Utah Code Annotated 1953. This action is appealed pursuant to Rule 3, Rule 4 (Utah Rules of Appellate Procedure), and UCA Rule 78-2-2, from the District Court to the Supreme Court for the State of Utah and pursuant to the pour over rule from the Utah Supreme Court to the Utah Court of Appeals.

ISSUES PRESENTED FOR REVIEW

1. Whether the California Court had Jurisdiction over Defendant Utah Trust:
 - A. Where the Utah Trust was not personally present in California at the time of the transaction;
 - B. Service on The Trust was obtained in Utah and
 - C. Insufficient grounds were alleged in the Pleadings and affidavit to support California jurisdiction;
 - (1) No Activity in the Forum State
 - (a) No Office
 - (b) No Advertising
 - (c) No Other transactions
 - (d) No Telephone
 - (2) Minimum contacts
 - (a) Transaction was only contact.
 - (b) No information on where transaction took place.

STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from a final judgment issued by the Third Judicial District Court, Salt Lake County, State of Utah wherein the Court denied Defendant's Motion to Vacate and Set Aside a Foreign Judgment for lack of jurisdiction in the Forum State.

B. HISTORY

The Defendant Alpha Funding Group Trust was formed in the State of Utah and has done business in Utah and been a resident of Utah since its creation in 1992. (R. 15 par. 5) (R 27-28) Plaintiffs pleadings acknowledge that the principal office of the Defendant is in Utah. On or about the 1'st day of February 2001, the Plaintiff filed a Complaint in California against the Defendant and others for an amount it claimed Defendant owed (R 47). The Plaintiff served the Defendant in Utah (R 70). On the 7'th day of November 2001, the Plaintiff obtained a California Default Judgment against the Defendant.

Plaintiff claims personal service upon the Defendant by the Utah service.

Defendant claims that the California Court did not have jurisdiction because the Defendant was not served in California, had not done business in the State of California, nor had activity

and minimum contacts with the State of California sufficient to give the California Court jurisdiction.

On or about April 16, 2002, the Plaintiff filed with the Third District Court for Salt Lake County his Notice of Filing a Foreign Judgment. The notice was mailed to the Defendant Trust by the Clerk of the Court on April 16, 2002.

On May 3, 2002, Defendant Trust filed in the Third District Court, a Motion to Vacate and Set Aside Plaintiff's Foreign Judgment which was ultimately denied by the District Court based upon a minimum contacts theory. That one contact is sufficient to satisfy the minimum contacts between parties.

C. STATEMENT OF FACTS

1. Plaintiff filed a complaint against the Defendant in California on or about February 1, 2001. (R. 47)

2. Plaintiff served the Defendant with the complaint in the State of Utah, on 4/03/01. (R. 70)

3. Plaintiff on November 07, 2001 took a Default Judgment against the Defendant based upon its affidavit that:

- a. Plaintiff had served the Defendant in the State of Utah;
- b. That Plaintiff did not receive an answer from the Defendant; and
- c. That the California Court had jurisdiction over

the Defendant Alpha Funding Group Trust without supporting pleadings or affidavits. (R. 53-60)

4. On April 16, 2002, the California Foreign Judgment was filed in the Third District Court, State of Utah. (R. 1-4)

5. On April 16, 2002, a Notice of Filing a Foreign Judgment was filed with the Third District Court of Salt Lake County. The Clerk of the Court subsequently mailed a copy of the notice to the Defendant. (R. 5-7)

6. On May 1st 2002, Defendant filed a Motion and Memorandum to Vacate the Foreign Judgment. (R. 12-28)

7. Plaintiff subsequently filed their Memorandum in Opposition To Motion To Vacate or Set Aside Plaintiff's Foreign Judgment (R 34) to which Defendant filed a Reply. The Motion to Vacate the Foreign Judgment was heard on December 10, 2002 by Judge Anthony B. Quinn and Defendant's Motion To Vacate or Set Aside was Denied. (R. 166 pg 4-7)

8. On January 9, 2003, Defendant filed an Appeal from the Court's Order Denying the Motion to Vacate. (R. 154-155)

9. Alpha Funding Group Trust is a Utah Trust and has not done business in the State of California nor had sufficient contacts with the state of California to give the California Court Jurisdiction over the Defendant. See Affidavit (R. 15 par 5) (R.27-28 par 3&4)

10. Plaintiff's California Complaint designates the Defendant Lally and Associates as a business Organization whose form is unknown. It designates Tal Lally as an Agent of Alpha Funding Group Trust but does not support it with affidavits or facts. (See (R. 47-52) Plaintiff's Exhibit 'D' page 1, paragraph 3)

11. Under paragraph 6 on page 2 of Exhibit 'D' (R. 47-48), the Plaintiff claims that the contract is to be performed here (in California), yet the entity dealt with is a Utah entity with offices in Utah. Any funds from that entity would have to originate from Utah.

12. Plaintiff under paragraph 13 page 4 of Exhibit 'D' (R. 47-48), acknowledges that Alpha Funding has its' principal office in Salt Lake City, Utah.

13. Under paragraph 14 page 4 of Exhibit 'D' (R. 47-48), the transaction is alleged but the location of the transaction is not designated.

14. Under paragraph 20 page 5 of Exhibit 'D' (R. 51), Plaintiff alleges that Defendant Tal Lally is an agent of the Defendant Alpha Funding Group Trust but does not back that up with an affidavit or any documentation which designates Tal Lally as the agent of Alpha Funding Group Trust. All communication between the Plaintiff and Tal Lally is through Lally and Associates. See Exhibits 'B' (R. 44) and 'C' (R. 45-46).

15. The communication between Alpha Funding Group Trust with Tal Lally is addressed to Lally & Associates. See Exhibit 'C' (R. 45-46).

D. SUMMARY OF ARGUMENT

Defendant Utah Trust entered into an agreement to borrow money from a California Resident. Plaintiff marshals no evidence either by allegation in his pleadings or supporting affidavit which sets forth where the contract was entered into, where the money was sent from or any activity by the Defendant Trust in the State of California. Upon default the Plaintiff sued the Defendant in the California Forum pursuant to California's Long Arm Statute and served Defendant in Utah. In the pleadings, insufficient information was set forth to support California jurisdiction but in spite of that fact, the California entered a Default Judgment against the Defendant Trust.

In order to justify jurisdiction under California's Long Arm Statute, Plaintiff must show the Utah Trust had sufficient minimum contacts with California to satisfy Due Process under California, Utah, and Federal Constitutions.

No allegations were set forth in the Pleadings and Affidavit which supported any activity by the Utah Trust in California except the allegation in the Complaint that the contract was to be performed in California (a fact not supported by the Promissory

Note which was ambiguous as to where it was to be paid) which by itself did not satisfy Due Process sufficiently to justify the extension of California's Long Arm Statute to a Utah Trust. As the Contract was a Promissory Note (R 67) which was to be paid in California or at some other place of Plaintiff's designation, there was insufficient activity in California to justify the jurisdiction of the California Court over a Utah resident under either Federal, Utah, or California standards.

Therefore, Defendants Motion to Vacate and Set Aside the Foreign Judgment, reversing the lower court, should be allowed.

E. ARGUMENT

The Defendant moves the Court of Appeals to Overrule the Lower Courts Denial of Defendant's Motion to Vacate and Set Aside the Foreign Judgment filed by Plaintiff against the Defendant in the State of Utah.

The Lower Court found jurisdiction based upon one transaction between the Plaintiff and the Defendant without an allegation that it happened in California. The Lower Court stated that '(T)he other basis of personal jurisdiction is minimum contacts, and if you have minimum contacts with a foreign state and exercising jurisdiction does not offend the due process clause of the Constitution, then you can exercise limited jurisdiction over both the claims arising out of that minimum contact, and that's what we

have here. The general jurisdiction doing business cases are inoperative because that isn't what's being claimed here.' (R. 166 pg 4 lines 7-14) The Lower Court is stating that between parties, one transaction is sufficient to satisfy the minimum contact standard.

I. PERSONAL SERVICE IN THE FORUM STATE

There is no question that if the Defendant Trust were found in the forum of California and served in California, the California Court would have jurisdiction. If the party to be sued resides outside of the forum state, California, at what point does an out of state service bring jurisdiction to the forum state. All of the States have formulated Long Arm Statutes which are aimed at bringing under the jurisdiction of the forum, certain actions of foreign Defendants. Those actions are based upon the amount of activity which the foreign Defendant has performed in the forum State.

The minimum activity is based upon contacts and the type of contacts made in the forum State. A court looks at such things as number of contacts with the state, the intent of the foreign Defendant to use the benefits of the laws of the forum state, and or the business activity between the Defendant and the citizen or citizens of the forum state. Fairness and reasonableness (Due Process) are the basis of allowing jurisdiction over a foreign

Defendant. No cases support the proposition that one transaction submits a Defendant to the jurisdiction of a foreign forum

II. UTAH ALLOWS FULL FAITH AND CREDIT TO FOREIGN JUDGMENTS

Under U.S. Const. Article IV Section 1 and rule 78-22a-2 subject to U.S. Const. XIV and Utah Constitution Article 1 Section 7, a foreign judgment authenticated with an appropriate act of Congress or an appropriate act of Utah may be filed with the Clerk of any District Court in Utah. Under Section 78-22a-2(3) UCA, it is subject to the same defenses, enforcement, satisfaction and proceeding for reopening, vacating, setting aside, or staying as a judgment of a District Court of Utah.

Section 78-22a-3(3) states that "No execution or other process for the enforcement of a foreign judgment filed under this chapter may issue until 30 days after the judgment is filed."

III CALIFORNIA LACKS JURISDICTION OVER DEFENDANT

On or about March 23, 2001, Plaintiff Sakhrani filed a Complaint against Alpha Funding Group Trust, Tal Lally and Lally & Associates. Under that complaint the Plaintiff alleged that:

1. Alpha Funding Group Trust was a business organization;
2. The contract was to be performed in California;
3. The action was for breach of contract of a

promissory note;

4. The Defendant became indebted to Plaintiff for money lent by plaintiff to the Defendant;
5. Alpha Funding Group Trust was a business with its principle office in Salt Lake City, Utah;

Plaintiff in his pleadings and affidavits failed to marshal evidence to support his allegations contained within his pleadings sufficient to qualify jurisdiction of the state California by failure to state:

1. Where the transaction was entered into;
2. Where the funds were to be repaid;
3. Sufficient information supported by affidavit which sets forth minimum contacts of Defendant Alpha with the state of California of a nature sufficient to satisfy Due Process and allow jurisdiction.
4. Where the funds were sent from.

Defendant in its motion to vacate the foreign judgment in the affidavit of Wesley F. Sine stated:

1. That the events took place in Utah as he executed the document in Utah;
2. That Alpha Funding Group has had insufficient contacts with the state of California to subject it to the jurisdiction of the State of California; and

3. That Alpha Funding Group Trust is a Utah Trust formed and operating in the State of Utah.

The allegations of the Plaintiff pertaining to jurisdiction are inadequate to give the California Court jurisdiction over the Defendant. Plaintiff must allege certain minimum allegations in order to satisfy the jurisdiction issue. There was no allegation in the pleadings that Alpha Funding Group Trust was doing business in the State of California but to the contrary, Plaintiff acknowledged that the Defendant Trust's main office was located in the State of Utah.

Under *Data Management Systems, Inc. v. EDP Corp.*, 709 P.2d 377 (Utah 1985), the Utah Supreme Court stated "A foreign judgment rendered without jurisdiction over the defendant or under circumstances which amount to a lack of due process is not entitled to full faith and credit in Utah." The Utah Supreme Court went on to say that "a showing of fraud or lack of jurisdiction or due process in the rendering state" are the only "defenses (which) may be raised to destroy the full faith and credit owed to the foreign judgment sought to be enforced under the Foreign Judgments Act."

In the Data case, Defendant litigated the jurisdiction issue in the foreign forum and having lost there attempted to litigate the jurisdiction issue again in Utah.

The Defendant Alpha Funding Group Trust while it had notice of

the lawsuit, believing the California Court did not have jurisdiction, choose not to litigate the jurisdiction issue in California because of the hardship caused by the distances between the two states. To allow this judgment to be enforced in Utah would deprive defendant Trust, a Utah Resident, of due Process and the right to have its day in court. Plaintiff knew the Defendant resided in Utah and that the action should be brought under the jurisdiction of the Utah Courts but failed to do so.

Under Holm vs. Smilowitz, 840 P.2d 157 (Ct. App 1992) "'The demands of due process rest on the concept of basic fairness of procedure and demand a procedure appropriate to the case and just to the parties involved.'" Wiscombe v. Wiscombe, 744 P.2d 1024 (Utah App. 1987) (quoting Rupp v. Grantsville City, 610 P.2d 338 (Utah 1980). "One of the fundamental requisites of due process is the opportunity to be fully heard.'" Defendant in its argument before the lower court argued 'It's unfair to make Alpha funding Group Trust go there, hire Counsel there and try to protect itself there over a one-time situation, and that's part of the situation, too, is fairness, a due process type situation.' pg 5 line 13-16.

The court incorrectly ruled that a single transaction satisfied the minimum contact standard and thereby submitting the Defendant to the jurisdiction of California.

IV AN ACTION FOR PERSONAM JURISDICTION IS NOT PROPER UNDER THE FACTS OF THIS LAWSUIT-DEFENDANTS DID NOT HAVE CONTINUOUS AND SYSTEMATIC BUSINESS CONTACTS

An action that seeks to impose personal liability or obligation on the Defendant in favor of another is an action in personam, and "a judgment in personam is one that imposes a personal liability or obligation on one person in favor of another." *Hanson v. Denckla*, 357 U.S. 235, 246 n.12, 78 S.Ct. 1228, 2 L.Ed 2d 1283 (1958). "A valid judgment imposing a personal obligation or duty in favor of the Plaintiff may be entered only by a court having jurisdiction over the person of the defendant." *Kulko v. California Superior Court* 436 U.S. 84, 91 S.Ct. 1690, 56 L.Ed. 2d. 132 (1978) See *Pennover v. Neff*, 95 U.S. 714, 732-733, 24 L. Ed. 565 (1878); *Hartfore v. superior Court*, 47 Cal. 2d 447, 454, 304 P. 2d 1 (1956); *Titus v. Superior Court*, 23 Cal. App. 3d 792, 799 100 Cal. Rpt. 477 (1972)

Plaintiff seeks to enforce a California judgment against the Defendant Alpha Funding Group Trust without the California Court obtaining jurisdiction over the Defendant. This judgment necessarily determines the personal rights and obligation of the Defendant Alpha over which it did not have jurisdiction.

Therefore to issue a judgment against a foreign Defendant, the California Court must first have in personam jurisdiction over the Defendant Alpha Funding Group Trust. "For jurisdiction to occur

over a foreign entity necessary contacts to satisfy due process must be present, and (in) (personam) (jurisdiction) may be obtained in California where those contacts exist. See pg 72. Banco Ambrosiano v. Artoc Bank 62 N.Y. 2d 65 (1984)" Case where in rem items were within the state along with a bank account which was used to handle owners international business.

"The court must be able to say from the facts that the corporation is 'present' in the State 'not occasionally or casually, but with a fair measure of permanence and continuity'" page 30, Landoil v. Alexander Service., 77 N.Y. 2d 28 (1990). "We concluded that the manufacturer which was not qualified to do business in this State and did not have an office or place of business here, was not subject to jurisdiction because it had not engaged in a systematic and regular course of business in New York. '(Delagi v. Volkswagenwerk Ag, 29 N.Y. 2d 426.)'"

In the present case before the Court the plaintiff marshaled no evidence in either pleadings or affidavit of a systematic and regular course of business in California by Defendant Trust. In fact no evidence at all was presented showing any business activity of Defendant in California except (maybe) a single transaction where the money borrowed was alleged to be paid in California or where ever the Plaintiff designated. (No allegation that the transaction happened in California, only that it was to be

fulfilled in California. That is ambiguous because the Plaintiff could have chosen under the promissory note to be paid in a place other than California.)

There is no showing or allegation that Alpha Funding Group Trust:

- (a) Is licensed as a Foreign Corporation in the State of California,
- (b) Advertise offices in California,
- (c) Advertises for business in the State of California,
- (d) Advertises in the business section of the California telephone book, or
- (e) Has an office within the State of California.

Plaintiff's complaint only alleges that the Defendant Alpha Funding Group Trust does business in the State of California which is not supported by specific facts alleged or supported by affidavit. One single act, if it happened in California, is not doing business in a state and does not satisfy the fairness and reasonableness conditions of due process.

Plaintiff presented no evidence of a systematic effort by Defendant Trust to do business in the State of California.

Simply put, the Plaintiff in his pleadings and affidavit failed to marshal any evidence which supported the proposition that California had jurisdiction over the Defendant.

The Defendant Alpha in the supporting affidavit filed with its motion stated that Alpha Funding Group Trust was not doing business in the State of California.

The conclusion to be drawn is that Defendant Alpha Funding Group Trust has not availed itself through its' actions of the benefits of California sufficient to confer jurisdiction of the court over it as is necessary under the law as promulgated by the US Supreme Court, the California Supreme Court, and the Utah Supreme Court.

As set forth under International Shoe, assertions of State Court jurisdiction must comply with due process requirements and must be evaluated according to the minimum contacts standards set forth in decisions regarding in personam actions. See International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95.

"To establish personal jurisdiction, the Plaintiff must show that the law of the forum state confers jurisdiction, and that its exercise would not be inconsistent with Federal Due Process." Hirsch v. Blue Cross, Blue Shield of Kansas City 80 F. 2d 1474 (9th Cir. 1986). "The constitutional touchstone of the determination whether an exercise of personal jurisdiction comports with due process remains whether the defendant purposefully established minimum contacts in the forum state." Asahi v. Metal Industry Co.

v. Superior Court, 480 U.S. 102, 108-109, 107 S. Ct. 1026, 94 L.Ed.2d 92, see also Burger King Corp. v. Rudewicz, 471 U.S. 462, 472, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985), see also World-Wide Volkswagen Corp v. Woodson, 444 U.S. 286, 291, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980)

Therefore, in order for the California Court to have jurisdiction over Defendant, the Court must be satisfied that Defendants have sufficient minimum contacts with the California forum to make the exercise of in personam jurisdiction legally appropriate.

A. Defendant has Insufficient Contacts With California

"Although the existence of sufficient contacts depends upon the facts of each case, the determination must be made on a finding of the following two factors: Some act by which the defendant has purposefully availed himself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of the state.. (Kulko v. California Superior Court [id page 94], and a sufficient relationship ("nexus") between the defendant and the forum state such that the exercise of personal jurisdiction is reasonable and fair (International Shoe Co. v Washington [Id 316-317])." Modlin v. Superior Court 176 Cal App. 3d 1178, 1179, 222 Cal rptr. 662 (Cal. App.2 Dist. 1989).

In Asahi v. Metal Industry Co. v. Superior Court, 480 U.S.

102, 108-109, 107 S.Ct. 1026, 94 L.Ed.2d 92, the court rationalized that the defendant "has no officer, property or agents in California. It solicits no business in California and has made no direct sales (in California)." Based thereon the Court found that the defendant did not have sufficient minimum contacts with California for jurisdiction.

Clearly, Defendant is inline with the Asahi Case. Defendants have not availed themselves of the benefits of California and have not deliberately directed their activities to California.

The California Court does not have jurisdiction over Defendant Trust under these tests. Defendant does not have significant or sufficient contacts with California to give jurisdiction. Only one possible contact is set forth under the allegations and that is not a sure thing.

It, therefore, would be unreasonable and unfair to compel Defendant to litigate this action in California.

Therefore, the California lacks in personam jurisdiction over Defendant.

B. No Nexus Exists Between Defendant And California So That Personal Jurisdiction Is Not Reasonable And Fair.

"The structures of the due process clause forbid a state from exercise personal jurisdiction over a defendant under circumstances that would offend 'traditional notions of fair play and substantial justice.'" Asahi Metal Industry Co. v. Superior Court id 113. Thus

and without admitting in any way that this Defendant even has any significant contacts with California, "once it has been decided that defendant purposefully established minimum contacts with California, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice'" Burger King Corp v. Rudewicz 471 U.S. 462, 476 (1985); Cornelison v. Chaney, 16 Cal 3d 143, 147, 148 (1976); Great-West Life Assurance Co. v. Guarantee Co. of North America 205 Cal App. 3d 199, 209 (1988).

"The protection against inconvenient litigation is typically described in terms of reasonableness' or 'fairness.'" World-Wide Volkswagen Corp. v. Woodson, id 286, 292, see Cornelison v. Chaney, 16 Cal.3d 143, 147 (1976) [the general rule is that the forum state may not exercise jurisdiction over a nonresident unless his or her relationship to the state is such as to make the exercise of such jurisdiction reasonable]; Buckeye Boiler Co. v. Superior Court 71 Cal. 2d 893, 898 (1969). [a defendant not literally present in the forum state may not be required to defend itself in that state's tribunals unless the quality and nature of the defendant's activity in relation to the particular cause of action makes it fair to do so].

"An essential criterion in all cases is whether the 'quality and nature' of the defendant's activity is such that it is

'reasonable' and 'fair' to require the defendant to conduct his defense in the State." Kulko v. California Superior Court id 92 (1978), rehearing denied, 438 U.S. 908 (1978). See also Bradford vs. Nagle 763 P.2d 792

The Plaintiff has clearly failed to Marshal Evidence by pleadings or affidavit to support Defendant's relationship with California sufficient to make it reasonable and fair to require a defense by Defendant in California. Midvale City vs. Halton 2003 Ut. 26.

Since Defendant does not have significant activity or contacts with California, the California Court lacked personal jurisdiction over Defendant and the judgment is none enforceable in Utah.

C. The Function of Requiring Minimum Contacts Would Not Be Diminished If Jurisdiction Were not Found

"The concept of minimum contacts, turn, performs two related, but distinguishable functions. It protects the defendants against the burdens of litigating a distant or inconvenient form. And it acts to ensure that the States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." World-Wide Volkswagon Corp. v. Woodson, id 291-292 (1980)

In Asahi, the court found that it would be unreasonable to require the defendant to assert jurisdiction over the foreign defendant, in part because of the severe burden placed on the

defendant in defending an action in a foreign country. The Asahi court held, "Certainly the burden on the defendant in this case is severe."

It is obvious that a severe burden would be placed on a Utah Defendant, to litigate this case in California. This court does not overreach by overruling the lower court, by vacating and setting aside the Foreign judgment.

V. TAL LALLY OR TAL LALLY & ASSOCIATES IS NOT SHOWN TO BE AN AGENT OF THE DEFENDANT TRUST

The pleadings of the Plaintiff attempts to designate Lally & Associates as an agent of the Defendant Alpha Funding Group Trust, but it fails to support the allegation. Most of the Communication with Plaintiff is through Lally & Associates. None of the communications between Lally and Lally and Associates describe that entity as being an agent of Alpha Funding Group Trust. The only area where Tal Lally is described as an agent of the Defendant Alpha is in the pleadings themselves which is self serving lacking the support of affidavit and cannot be used by Plaintiff as fact. At the very least, Plaintiff would need an affidavit to support that allegation..

Basically the Plaintiff is saying that I live in California, Tal Lally, Lally & Associates live in California and therefore, the California Court has jurisdiction over Defendant Alpha even though

Plaintiff acknowledges Alpha has its' principle offices in Salt Lake City, Utah.

The Long Arm Statutes of each State are designated to extend jurisdiction over those actions which are significantly transacted within the respective states which in this instance is the State of California. One transaction does not qualify and in this instance, there was no allegation or proof before the California Court that even one transaction took place in California. That allegation is missing in Plaintiff's pleadings and in Plaintiff's support affidavits.

This is confirmed in *Far West Capital, Inc. v. Towne*, 46 F.3d 1071, 1074 (10th Cir. 1995) where "To obtain personal jurisdiction over a nonresident defendant in a diversity action, a plaintiff must show that jurisdiction is legitimate under the laws of the forum state and that the exercise of jurisdiction does not offend the due process clause of the Fourteenth Amendment."); see also *Kuenzle v. HTM Sport-Und Freizeitgerate AG*, 102 F.3d 453, 455 (10th Cir. 1996); *Mack Trucks, Inc. v. Arrow Aluminum Castings Co.*, 510 F.2d 1029, 1031 (5th Cir. 1975) "In a diversity case such as this one, a federal district court may exercise in personam jurisdiction over a foreign defendant only if a state court could do so in proper exercise of state law, here the long arm statute."; *Garden Homes, Inc. v. Mason*, 238 F.2d 651, 652 (1st Cir. 1956) (holding

that if state court lacked jurisdiction of parties, federal court acquired none on removal); Greenberg v. Greenberg, 954 F. Supp. 213, 215 (D. Colo. 1997); Casad Ry. Servs., Inc. v. Union Pacific R.R., 659 F. Supp. 123, 125 (N.D. Ind. 1987); CMI Corp. V. Costello Constr. Corp., 454 F. Supp. 497, 501 (W.D. Okla. 1977) (holding that diversity of citizenship only confers subject matter jurisdiction and that "personal jurisdiction must be established through contact with the forum").

Plaintiff has failed to show sufficient contact which would allow the California Court jurisdiction in this matter, and therefore the judgment is unenforceable in the State of Utah.

VI DEFENDANT DID NOT CONSENT TO CALIFORNIA JURISDICTION

The negotiations between the Defendant Alpha through its Utah Counsel and Plaintiff's California Counsel did not give jurisdiction to the California Court over the Defendant Alpha. The Defendant Alpha did not give up its Jurisdiction defense simply because it issued from Salt Lake City, Utah an irrevocable payment order which was to emanate from Utah in an attempt to settle the matter. Under Utah Law, a party is not bound in the main action by his attempts to negotiate a settlement of the matter. Negotiations between a Utah attorney and a California Attorney does not give jurisdiction over the Utah client because of the attempt to find a settlement in the matter.

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VII NO INJUSTICE WILL RESULT IF DEFENDANT'S MOTION
IS GRANTED, AS A COMPLETE RESOLUTION OF
PLAINTIFF'S CAUSE OF ACTION COULD BE HANDLED IN UTAH.

If the Courts overrules the lowers court denial to vacate the Plaintiffs judgment, no injustice would result as the action could be brought in the State of Utah.

VIII PLAINTIFF'S FAILURE TO MARSHAL EVIDENCE
OF JURISDICTION IS DISPOSITIVE

Plaintiff's failure to marshal evidence of jurisdiction is dispositive of this action. "'It is the burden of the party who seeks the exercise of jurisdiction in his favor [to clearly allege] facts essential to show jurisdiction. If [it] fails to make the necessary allegations, [it has] no standing.' FW/PBS, Inc. v. City Dallas, 493 U.S. 215, 231, 110 S.Ct 596, 608, 107 L.Ed.2d 603 (1990) (citations omitted)." Midvale City vs. Halton (Utah 2003) 2003 Ut 26

The District Court and Plaintiff in the present action as the District Court and Plaintiff in Midvale City vs. Halton, failed to make any factual findings that could support standing of jurisdiction. As heretofore stated, the Plaintiff in his allegations and affidavits fails to marshal any factual evidence of a quality sufficient to support the jurisdiction of the California Court over the Defendant.

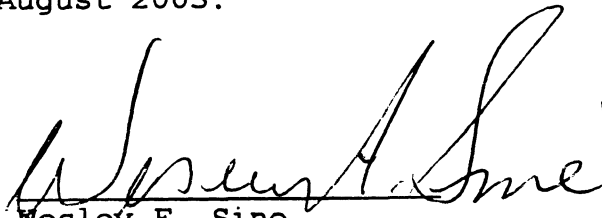
Therefore, the lower courts denial should be overturned and Defendant's Motion to Vacate or Set Aside the Foreign Judgment be allowed thereby Vacating the Foreign Judgment.

CONCLUSION

The California Court did not have jurisdiction over the Defendant as the Defendant was residing and doing business in the State of Utah and did not have sufficient minimum contacts with California to give jurisdiction to California under either Federal, California or Utah Law. There is a lack of jurisdiction and a failure of Due Process as relates to the rights of the Defendant. It would not be fair or reasonable to force the Defendant Trust to defend the action in the foreign forum. Alpha has not had its' day in court and has not had a chance to have it's side of the issue heard.

Based upon the above arguments, the lower court should be overruled and ordered to Vacate and Set Aside Plaintiff's Foreign Judgment as the judgment fails to meet the due process test and the California Court did not have jurisdiction over the Defendant.

Dated this 22'nd day of August 2003.

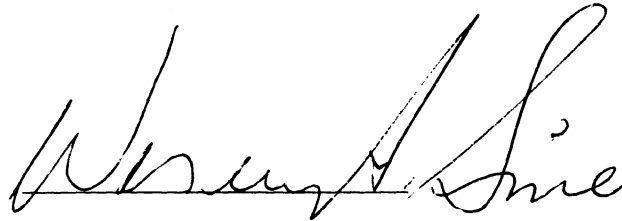

Wesley F. Sine
Attorney for Defendant
Alpha Funding Group Trust

CERTIFICATION OF MAILING

I hereby certify that a true and correct copy of the above APPELLANT'S BRIEF was mailed this 22nd day of August 2003 to the following:

Arnold Richer, Esq.
Darci D. Tolbert, Es.t
RICHER, SWAN & OVERHOLT P.C.
6925 So. Union Park Center, Suite 450
Midvale, Ut 84047

STEVEN R. SKIRVIN, (#7626)
DION-KINDEM & CROCKETT
21650 Oxnard Street, Suite 500
Woodland Hills, CA 91367

A handwritten signature in black ink, appearing to read "Steven R. Skirvin", written over a horizontal line.

ADDENDUM

AMENDMENT XIV**Section****1. [Citizenship — Due process of law — Equal protection.]****2. [Representatives — Power to reduce appointment.]****3. [Disqualification to hold office.]****Section****4. [Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.]****5. [Power to enforce amendment.]****Section 1. [Citizenship — Due process of law — Equal protection.]**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. [Representatives — Power to reduce appointment.]

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial Officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. [Disqualification to hold office.]

No person shall be a Senator or Representative in Congress, or Elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

COLLATERAL REFERENCES

Utah Law Review. — The Mootness Question in Habeas Corpus Proceedings Where Petitioner Is Released Prior to Final Adjudication, 1969 Utah L. Rev. 265.

Habeas Corpus and the In-Service Conscientious Objector, 1969 Utah L. Rev. 328.

Post-Conviction Procedure Act: Limitation on Habeas Corpus?, 1969 Utah L. Rev. 595.

Am. Jur. 2d. — 39 Am. Jur. 2d Habeas Corpus §§ 5 to 7.

C.J.S. — 16A C.J.S. Constitutional Law § 472 et seq.; 39 C.J.S. Habeas Corpus § 5.

A.L.R. — Anticipatory relief in federal courts against state criminal prosecutions growing out of civil rights activities, 8 A.L.R.3d 301.

Key Numbers. — Constitutional Law ⇐ 83(1), 121 to 123.

Sec. 6. [Right to bear arms.]

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms.

History: Const. 1896; L. 1984 (2nd S.S.), S.J.R. 3.

Compiler's Notes. — Laws 1983, Senate

Joint Resolution No. 2, proposing to amend this section, was repealed by Senate Joint Resolution No. 3, Laws 1984 (2nd S.S.), § 2.

NOTES TO DECISIONS

ANALYSIS

Prospective application.

Regulation of right to bear arms.

Prospective application.

The amendment to this provision by Laws 1984 (2nd S.S.), Senate Joint Resolution No. 3 is to be given prospective application only. State v. Wacek, 703 P.2d 296 (Utah 1985).

Regulation of right to bear arms.

This section gives sufficient authority for the legislature to forbid the possession of dangerous weapons by those who are not citizens, or who have been convicted of crimes, or who are addicted to drugs, or who are mentally incompetent. State v. Beorchia, 530 P.2d 813 (Utah 1974).

COLLATERAL REFERENCES

Utah Law Review. — The Individual Right to Bear Arms: An Illusory Public Pacifier?, 1986 Utah L. Rev. 751.

Am. Jur. 2d. — 79 Am. Jur. 2d Weapons and Firearms § 4.

C.J.S. — 16A C.J.S. Constitutional Law § 511; 94 C.J.S. Weapons § 2.

A.L.R. — Gun control laws, validity and construction of, 28 A.L.R.3d 845.

Validity of statute proscribing possession or carrying of knife, 47 A.L.R.4th 651.

Key Numbers. — Constitutional Law ⇐ 82; Weapons ⇐ 1, 3, 6 et seq.

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

History: Const. 1896.

Cross-References. — Eminent domain generally, § 78-34-1 et seq.

Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

[3.] The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Compiler's Notes. — The bracketed phrases in the first paragraph of this section were superseded by Amendment XI.

Sec. 3. [Treason, proof and punishment.]

[1.] Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

[2.] The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV

[STATE AND TERRITORIAL RELATIONS]

Section

1. [Full faith and credit to records and judicial proceedings of states.]
2. [Privileges and immunities — Fugitives from justice and service.]
3. [Admission of states — Rules and regula-

Section

- tions respecting the territory and property of the United States.]
4. [Guaranty of republican form of government and against invasion.]

Section 1. [Full faith and credit to records and judicial proceedings of states.]

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Sec. 2. [Privileges and immunities — Fugitives from justice and service.]

[1.] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

[2.] A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[3.] No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regula-

History: L. 1983, ch. 159, § 1; 1996, ch. 198, § 65.

CHAPTER 22a

FOREIGN JUDGMENT ACT

Section		Section	
78-22a-1.	Short title.	78-22a-5.	Lien.
78-22a-2.	Definition — Filing and status of foreign judgments.	78-22a-6.	Optional procedure.
78-22a-3.	Notice of filing.	78-22a-7.	Repealed.
78-22a-4.	Stay.	78-22a-8.	Uniformity of interpretation.

78-22a-1. Short title.

This chapter shall be known and may be cited as the “Utah Foreign Judgment Act.”

History: C. 1953, 78-22a-1, enacted by L. 1983, ch. 169, § 1.

NOTES TO DECISIONS

Cited in *Rocky Mt. Claim Staking v. Frandsen*, 884 P.2d 1299 (Utah Ct. App. 1994), cert. denied, 899 P.2d 1231 (Utah 1995).

78-22a-2. Definition — Filing and status of foreign judgments.

(1) As used in this chapter, “foreign judgment” means any judgment, decree, or order of a court of the United States or of any other court whose acts are entitled to full faith and credit in this state.

(2) A copy of a foreign judgment authenticated in accordance with an appropriate act of Congress or an appropriate act of Utah may be filed with the clerk of any district court in Utah. The clerk of the district court shall treat the foreign judgment in all respects as a judgment of a district court of Utah.

(3) A foreign judgment filed under this chapter has the same effect and is subject to the same procedures, defenses, enforcement, satisfaction, and proceedings for reopening, vacating, setting aside, or staying as a judgment of a district court of this state.

History: C. 1953, 78-22a-2, enacted by L. 1983, ch. 169, § 1; 1991, ch. 169, § 1.

NOTES TO DECISIONS

ANALYSIS

Applicability.
Dormant judgment.
Enforcement of foreign custody decree.
Limitation of actions.
Setting aside foreign judgments.

Cited.

Applicability.
 The term “foreign judgments” does not include judgments from foreign countries; thus, a Utah court could not “register” a Japanese divorce decree. *Mori v. Mori*, 896 P.2d 1237

FILED DISTRICT COURT
Third Judicial District

DEC 27 2002

SALT LAKE COUNTY

By Deputy Clerk

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Co-Counsel for Plaintiff

IN THE THIRD DISTRICT COURT OF THE STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

DR. LAKHI SAKHRANI, M.D., an
individual,

Plaintiff.

v.

ALPHA FUNDING GROUP TRUST,
a business entity,

Defendant.

ORDER

Civil No. 026907222 FJ

Judge Anthony B. Quinn

Defendant's Motion to Vacate or Set Aside Plaintiff's Foreign Judgment came on for hearing on the 10th day of December, 2002, before the Honorable Anthony B. Quinn. Wesley F. Sine appeared on behalf of Defendant. Darci D. Tolbert appeared on behalf of

Plaintiff.

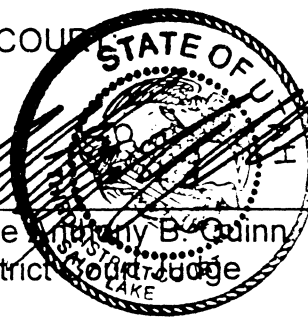
IT IS NOW HEREBY ORDERED AS FOLLOWS:

1. Defendant's Motion to Vacate or Set Aside Plaintiff's Foreign Judgment is denied.

DATED this 27th day of December, 2002.

BY THE COURT

Honorable Timothy B. Guinn
Third District Court Judge



CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of December, 2002, I caused a true and correct copy of the foregoing to be served upon the following parties by placing the same in the United States mails, postage prepaid, addressed as follows:

Wesley F. Sine
IBM Building, Suite 355
420 East South Temple Street
Salt Lake City, Utah 84111
Attorney for Defendant

Darci A. Zolner